

<b>Item No.</b> 5.2	<b>Classification:</b> Open	<b>Date:</b> December 8, 2004	<b>Meeting Name:</b> Council Assembly
<b>Report title:</b>		Deputation requests – supplementary advice on the Black Awareness Group deputation.	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Chief Executive (Borough Solicitor)	

### **SUPPLEMENTARY ADVICE FROM OFFICERS**

#### **Comments from the chief executive on the Black Awareness Group deputation**

1. The subject of the deputation for which this report is prepared is at the time of writing that “the Council’s statement at the Overview and Scrutiny Committee that Imperial Gardens was running at a loss... and the potential for these comments to be discriminatory.” The deputation may be ruled out of order on the grounds that it deals with matters currently under being dealt with through a legal process. However, in accordance with usual practice this report has been prepared.
2. The relevant meeting of Overview and Scrutiny Committee took place on 20<sup>th</sup> May. The records of the meeting have been examined. The comments made related to the fact, publicly available from inspection of records at Companies House, that in years prior to the maladministration found against the Council, the group of companies connected with Imperial Gardens had been trading at a loss. There was also reference to one of the companies being in liquidation. At no stage did the Council say, as has previously been alleged, that compensation will not be payable for that or any other reason. The Council does not have enough information to make any judgement at all regarding compensation.
3. The Council does not see on what basis it can be held to have discriminated against any person. The Council has offered the complainants (two of the directors of THK) £500 each, as recommended by the Ombudsman, but this has been rejected by them. It has always accepted that, if it can be shown to be legally liable for any wider loss, it will pay further compensation to the full extent of that liability for the actions and omissions of the Council’s officers identified in the public interest report of the appointed external auditor on the award of planning permissions at 295/7 and 299 Camberwell New Road, and in the report of the Commission of the Local Administration on an investigation into complaint number 02/B/08100. It is currently exercising its discretionary powers to pay the costs and disbursements of the claimants’ solicitors which are reasonably necessary to identify issues in sufficient detail for the Council to form a preliminary judgement as to the merits of their claim (although the process for arriving at a fair figure for these costs has run into difficulty, an issue which is covered in detail in the closed report “Imperial

Gardens – Legal Update”). The funding of the costs is a highly unusual step and reflects the concern of the Council over this case.

4. There are a number of powers under which the Council can negotiate an eventual settlement. However, their use is always subject to a reasonableness test. The advice of the District Auditor is that a payment can only be made in order either to procure a service-related benefit or to meet or reduce an actual or potential liability. In this case, therefore, the Council can only make a compensation payment to the directors and shareholders of THK if they are likely to be legally entitled to such a payment in the event of the matter progressing to court. For the claimants to be legally entitled to compensation from the Council, they must be able to demonstrate that they have incurred a loss and that the acts or omissions of the Council caused their loss.
5. In respect of this issue, the assets and liabilities of THK, and its profits and losses, as shown in its filed accounts, are relevant, although it is not the Council's position that they give the whole picture of the finances of the company. The directors of THK and their legal advisers are correct to say that they may be able to demonstrate other relevant factors, but as yet they have not done so.
6. If the Council tried to authorise a payment, which did not have a clear legal basis, the payment itself could and would be challenged. The Monitoring Officer would be under a duty to report on any unlawful payment and the District Auditor would wish to know the justification for any such payment. There is clearly scope for discussion and potentially compromise on the merits of a case but a case must first be stated. At present, the Council does not have sufficient information to decide whether it should settle the claim brought by the directors of THK and, if so, at what level.

### **Legal Comments**

7. **Duty not to discriminate in carrying out any function**  
The Race Relations (Amendment) Act 2000 introduced s19B into the Race Relations Act 1996. S19B provides that it is unlawful for a public authority in carrying out any functions of the authority to do any act, which constitutes discrimination.
8. Discrimination is defined by the main Act, and includes direct or indirect discrimination or victimisation.
9. The legal issues raised by the deputation are considered in detail in a closed report circulated separately to all members of the council and to the Black Awareness Group deputation.
10. **Duty to promote racial equality**  
The Amendment Act also replaced section 71 of the main act with a new section, which contains a duty on the council to a duty in carrying out its functions, to have due regard to the need to –
  - (a) to eliminate unlawful racial discrimination; and
  - (b) to promote equality of opportunity and good relations between persons of different racial groups

11. Section 71 provides for the Secretary of State to introduce by order specific duties to ensure better performance of the duty to promote racial equality.
12. The CRE's advice as to the meaning of the duty to promote racial equality is set out below

**What does the general duty mean in practice?**

The general duty will mean that, in performing their functions public authorities must have due regard to the need to promote race equality. Public authorities will need, for example, to ensure that they:

- Consult ethnic minority representatives;
- Take account of the potential impact of policies on ethnic minorities;
- Monitor the actual impact of policies and services and take remedial action when necessary to address any unexpected or unwarranted disparities;
- Monitor their workforce and employment practices to ensure that the procedures and practices are fair.

**Audit Trail**

<b>Lead Officer</b>	Bob Coomber, Chief Executive and Deborah Holmes, Borough Solicitor & Secretary	
<b>Report Author</b>	Graeme Gordon, Project Manager	
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<b><u>Officer Title</u></b>	<b>Comments Sought</b>	<b>Comments included</b>
Borough Solicitor	Yes	Yes
<b>Executive Member</b>		
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